



Rhode Island Department of Health
Three Capitol Hill
Providence, RI 02908-5094

www.health.ri.gov

DATE: **January 1, 2013**

TO: Representative Joseph M. McNamara, Chairperson
House Committee on Health, Education and Welfare
Senator Joshua Miller, Chairperson
Senate Committee on Health and Human Services

FROM: Rosemary Sheets
Program Manager, Health Professions Regulation

SUBJECT: Rhode Island Medical Marijuana Program

The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act was enacted on January 3, 2006. This report is submitted pursuant to section 2 1-28.6-6(k) of the Act.

The Department of Health, Office of Health Professions Regulation, is responsible for the administration of the Medical Marijuana Program. Four thousand eight hundred forty-nine (4,849) qualified patients and three thousand four hundred fifteen (3,415) designated caregivers were actively registered with the program as of December 30, 2012. To date, a total of twelve thousand seven hundred and two (12,702) registrations have been issued since the program inception. The Department revoked one (1) patient registration for felony drug convictions and weapons charges, and one caregiver registration for possession of marijuana in amounts over the statutory limit. There are four actions pending regarding alleged felony drug activities for three (3) registered patients and one (1) registered caregiver.

The Department issued a Cease and Desist Order to an entity providing medical marijuana authorizations after determining that they were operating as an organized ambulatory care facility without licensure from the Office of Health Facilities Regulation. The Department assisted multiple local police departments (within the very limited confines the Act allows) in their investigations of resident and landlord complaints regarding caregivers and patients possessing and distributing amounts of marijuana in excess of statutory limitations. The Department denied six (6) caregiver registrations in 2012 due to BCI's that contained felony drug convictions and one caregiver that was under the age of 21 years.

The Department charges a registration fee for qualified patients and caregivers of \$75 at the time of application. Patients and caregivers who submit satisfactory evidence to the Department of being a recipient of Medicaid, Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) pay a \$10 registration fee. The registration fee for qualified patients was increased to \$100.00, caregivers increased to \$200.00 and compassion center principal officer, board member, agent, volunteer or employee was increased to \$100.00 in accordance with the *Rules and Regulations Pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health [R23-1-17-Fee]* effective December 10, 2012. The registration fee for patients and caregivers who are receiving Medicaid, SSI or SSDI as well as the reissue of registry identification cards due to changes in required information for all categories was increased to \$25.00.

Revenue collected in the medical marijuana program for calendar years 2011-2012 inclusive, totaled \$566,655.00. Actual direct personnel and equipment costs for the program totaled \$589,086.16 for calendar years 2011-2012 inclusive. The 2.10 FTE's of staff utilized in 2011 albeit unfunded for medical marijuana, all of whom are also assigned to a multitude of other programs, proved insufficient to administer the many unfunded mandates of the medical marijuana program. An additional 1.25 FTE's of staff, also assigned to multiple professional programs, were added during 2012 in an attempt to meet the statutory mandate of approval or denial of thousands of medical marijuana patient and caregiver initial and renewal applications within 15 calendar days of receipt which equates to 11 working days (provided there are no

holidays, vacation or sick days). We have found that 3.35 FTE's is still insufficient to meet the myriad of duties the Act requires and responsibilities, especially to patients, that the staff take very seriously.

Additional staff duties include application review, data entry, process application and change of information form payments, assist the public daily by responding to the voluminous phone calls, emails and walk-ins, issue registrations, correspondence and photo ID cards for the average of 100 applications received each week and enforce disciplinary action against medical marijuana cardholders who have violated the provisions of the Act and Regulations.

One of the staff whose duties constituted 0.8 FTE's and was responsible for issuing initial registrations and change of information for medical marijuana patients and caregivers (in addition to assisting with duties described above), accepted a position in another HEALTH office the first week of December 2012. The remaining staff consisting of 2.15 FTE's continue to struggle to accomplish those vacated responsibilities. In addition, the physician authorization forms that must include the diagnosis of a qualifying medical condition; specifically those diagnoses with *chronic or debilitating disease or condition*, should preferably be reviewed by a HEALTH physician however, there is currently no funding to provide that level of oversight.

Pursuant to 21-28.6 as amended, Chapters 21-28.6-3, 21-28.6-4 and 21-28.6-12, the following revisions were made to the program:

- Seedlings and unusable marijuana were separately defined
- Primary caregiver definition was modified to include natural person primary caregiver
- Protections for registered patients selling, giving or distributing marijuana not exceeding legal amounts to registered compassion centers
- Compassion center applications approved prior to January 1, 2012 remain in full force and effect
- Compassion center volunteers added to those requiring registry identification cards
- State police notification to HEALTH that Compassion center registration card applicants have no felony drug conviction or have not entered a nolo contendere for a felony drug conviction and received a sentence of probation
- State police conducting criminal background check with finger prints for all Compassion Center registry identification card applicants
- Request from Compassion center to RI State Police for security inspection required
- Additional protections for registered compassion centers added
- Protections for state employees conducting administration, execution and/or enforcement of the Act
- Limitations on amount of marijuana a compassion center may possess reduced to 150 plants of which no more than 99 can be mature and 1500 ounces of usable marijuana
- Compassion center location to pre-existing public and private schools cannot be within 1,000 feet of the property line
- Conditions for revocation of a compassion center registration added
- Conditions for revocation of compassion center employee, agent, volunteer, principal officer or board member added

The following table depicts the number of registered patients and caregivers as of 12/30/2012.

		Active	Pending	Revoked
Minor Patient	Medicaid/SSI	2	0	0
	Non-Medicaid/SSI	0	0	0
	Total	2	0	0
Adult Patient	Medicaid/SSI	1966	20	0
	Non-Medicaid/SSI	2881	49	4
	Total	4847	69	4
Caregiver	Medicaid/SSI	251	12	0
	Non-Medicaid/SSI	3164	89	1
	Total	3415	104	1

Section 21-28.6-6(d) allows a patient to designate two (2) caregivers to assist with the patient's medical use of marijuana. The caregiver may not have a felony drug conviction. Section 21-28.6-3(6) allows a caregiver to assist a maximum of five patients, possess a maximum of 24 mature plants, 12 seedlings and a maximum of 5 ounces of usable marijuana.

ACTIVE MMP PATIENTS	
Patients with 0 caregivers	2466
Patients with 1 caregiver	1432
Patients with 2 caregivers	951
	4849
ACTIVE CAREGIVERS	
Caregivers with 1 patient	2151
Caregivers with 2 patients	409
Caregivers with 3 patients	86
Caregivers with 4 patients	31
Caregivers with 5 patients	15

Five hundred twelve (512) practitioners have certified patients for the program. A breakdown of qualifying diagnosis, comparing 2010 with 2012, is depicted in the following table. Note that some patients may have more than one diagnosis.

Diagnosis	Count		Percent	
	2010	2012	2010	2012
Cancer or Treatment	214	354	5.87%	4.00%
Glaucoma or Treatment	37	85	1.02%	1.00%
Positive Status for HIV or Treatment	97	107	2.66%	1.00%
AIDS or Treatment	38	39	1.04%	0.00%
Hepatitis C or Treatment	209	291	5.74%	4.00%
Chronic or Debilitating* Disease or Condition	1419		38.94%	
Cachexia/Wasting Syndrome	100	265	2.74%	3.00%
Chronic Pain*	711			
Seizures	24	125	0.66%	2.00%
Muscle Spasms	585	1393	16.05%	17.00%
Agitation of Alzheimer's	3	8	0.08%	0.00%
Severe Nausea	207	858	5.68%	11.00%
Severe, Debilitating Chronic		3504		44%
Other**		1015		13%

* In 2011 "Chronic or Debilitating Disease or Conditions" And "Chronic Pain" were combined for tracking purposes as "Severe Debilitating Chronic Pain".

**Other indicates diagnoses were not entered in license system.

Since the program's implementation the Department has had several requests for information with respect to the use of marijuana by nursing home residents. The Department continues to receive inquiries from landlords regarding tenants growing and smoking marijuana in their apartments. The Department has also fielded inquiries from local law enforcement regarding how many caregivers may grow in one location. In addition, the Department has fielded inquiries from employers with questions about registered patients testing positive for marijuana upon application for employment and from registered employees that have been fired for testing positive for marijuana. Except to prohibit discrimination against individuals registered in the program, the statute and regulations offer no guidance in these matters.

Pursuant to section 21-28.6-6(k) of the Act the Department has three (3) pending lawsuits involving medical marijuana:

1. *RIPAC, RIAPA, RIMS and Peter Nunes v. Michael Fine and the Rhode Island Department of Health, P.C. No. 2012-5182*
2. *Meghan Sullivan v. Dr. Michael Fine, Rhode Island Department of Health and State of Rhode Island, P.C. No. 2012-4724*
3. *11th State Consultations, Ltd. v. Board of Medical Licensure and Discipline and Linda Julian, PM-12-6045*

A fourth case was recently dismissed:

Amelia Gallant, Haley Gallant and Kelsey Gallant v. Dr. Michael Fine, Rhode Island Department of Health and State of Rhode Island, P.C.-12-6197

It is estimated that preparation and participation in each litigation will entail a minimum of three (3) months. The services of at least one attorney from the Department of Attorney General, one attorney from the Department of Health and one clerical support person will be needed for that period of time. The minimum estimated cost of salary and fringe is \$87,000.00 for each case for a total of \$261,000.00 for these three pending lawsuits.

The United States Food and Drug Administration has not altered its position regarding the use of marijuana for medical purposes; nor has it approved alternative delivery systems for marijuana.

The Department approved three applications for compassion center registrations in 2011. The issuance of the Registration To Operate a Compassion Center was delayed due to correspondence from US Attorney Neronha to the Governor stating enforcement actions would be taken if the Centers began operation with an unlimited amount of medical marijuana for distribution. The General Assembly amended the statute in May 2012 to include limitations on the amount of usable and unusable marijuana a Compassion Center could have at their facility. State employees were also given additional statutory protection from prosecution in the performance of their duties related to the medical marijuana program.

Additional information or questions about the Medical Marijuana Program should be directed to Rosemary Sheets, Program Manager, Health Professions Regulation at (401) 222-2828 or via email to Rosemary.Sheets@health.ri.govT.